

Held, also, STRONG, J., dissenting, that the declaration was not a warranty of the truth of the statements, but a mere collateral representation.

Per STRONG, J.: It was a warranty, but as it is confined to matters within the knowledge of M. and material to the risk the result is practically the same.

Held, as to the further insurance, that the condition should have been pleaded, but if available without plea it was not proved; what evidence was given should not have been received.

Per STRONG, J.: It was not shown that P.'s insurance was on the ice insured by M., who was not bound to deliver any specific ice under the contract.

Per GWYNNE, J.: The damages should be reduced by the amount received by P.

Appeal dismissed with costs.

Weldon, Q.C., and Jack for appellants.

F. E. Barker for respondent.

EXCHEQUER COURT OF CANADA

TORONTO ADMIRALTY DISTRICT.

(Noted for THE CANADA LAW JOURNAL.)

MCDougall, Local J.] [Oct. 6.

REIDE v. "QUEEN OF THE ISLES." (No. 20.)

Action for master's wages and disbursements—Right of master to bind owner—Limit of—Lien of master for disbursements—Lien for liability assumed by master—52 & 53 Vict., c. 46, s. 1 (Imp.).

This was a motion to confirm a local registrar's report. The master of a ship claimed for wages and disbursements and for liabilities assumed for necessities for vessel and for joint note for \$250, made by owner and himself, with agreement to pay note out of earnings of ship, as follows: "In consideration of the sum of two hundred and fifty dollars paid over to Captain James Reide, master of the steamer *Queen of the Isles*, now lying at or near the Bay of Quinte, and for supplies for said steamer, we hereby assign, transfer, and set over to _____ all her earnings and receipts, less absolute disbursed working expenses, until the above sum be repaid to him with interest, as set forth in a certain joint note made by us bearing even date

herewith. And this memorandum shall be held and become and hereby is declared to be a charge on said steamer's earnings and receipts, and the same is made in accordance with all such advances as are usually made to vessels for urgent supplies, and secured to the party making such advance by the master and owner thereof, the one or the other of them."

Mulvey, for plaintiff, cited *The Sarah*, 12 Probate Div., p. 158 (1887), reversed by House of Lords in 14 App. Cas., p. 209 (1889). The Act 52 & 53 Vict., c. 46, s. 1 (Imp.), was passed in 1889, after the decision of the House of Lords, to provide for liabilities assumed by a master for the ship, and making the vessel responsible, thus affirming by statute the judgment in the case of *The Sarah*.

Shirley Denison, for mortgagee intervening, contended that the mortgagee should not be prejudiced by an act of the owner and master without mortgagee's knowledge and consent.

Held, that the master has a maritime lien, to rank with lien for wages for disbursements actually and necessarily made, or liability incurred in connection with the ship, and that the limit of liability was restricted only to the value of the vessel and freight.

Held, also, that the master did not exceed his authority in borrowing money on note for the purposes of the ship, it being found that the sum so borrowed had been duly and properly expended for the ship.

Report of the registrar confirmed.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Chancery Division.

FERGUSON, J.] [July 6.

BALDWIN v. WANZER.

BALDWIN v. CANADIAN PACIFIC R.W. CO.

Landlord and tenant—Right of re-entry on condition broken—Severance of reversion—Imperial Conveyancing Act, 1881, s. 12.

Action for recovery of land upon an alleged right of re-entry after breach by the tenant of a covenant not to assign or sub-let without leave.